**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO. 35 OF 2002

M/s. Five Ocean Ship Repairing &
Marine Services LLC .. Plaintiffs.

vs.

MT "SYMPHONY 1"
ex. MT "ARABIAN LADY & Anr. .. Defendants.

Mr. D.C. Gomes with V.K. Rambhadran i/by A. D'Souza
for plaintiffs.
Mr. S. Aole i/by India Law Alliance
for Defendant No. 1.
Mr. V.V. Sheth with R.A. Fernandes for
Defendant No. 2.
Mr. R. Narichania with Nirav Shah
i/by DSK Legal for Defendant No.3.
Mr. A.M. Vernekar with M. Khatri
for Defendant No. 4.

**CORAM : S.U.KAMDAR, J.**

**DATE :** 18th July, 2005.

ORAL JUDGMENT :

. The present suit has been filed by the plaintiffs for recovery of UAE DHS 60,242/- along with further interest at the rate of 12% per annum

from the date of the suit till payment and/or realisation. In addition to the said claim the plaintiff has also claimed that the 1st defendant vessel m.t. SYMPHONY (ex-ARABIAN LADY) along with her hull, tackle, engines, machinery, boats, apparel and other paraphernalia be condemned and sold under the orders and directions of this Court towards the satisfaction of the suit claim by the plaintiffs. Few facts of the case in the background of which the present suit is filed are as under :-

2. The plaintiffs claim that the 2nd defendant herein is the owner of vessels known as m.t. ARABIAN QUEEN, m.t. SHAMSA, m.t. ARABIAN VICTORY and m.t. ARABIAN BEAUTY. It is the case of the plaintiffs that each of the aforesaid vessels are the sister vessels of the 1st defendant. According to the plaintiffs, the said defendant no. 2 is the owner of not only the aforesaid four vessels but also the 1st defendant.

3. It is the case of the plaintiffs that at the request of the 2nd defendant the plaintiffs agreed to carry out various repairs work and for which the quotations were filed with the defendant no. 2. After the defendants accepted the said quotation, the plaintiffs have carried out the said work and the said work has been certified as satisfactory by the Master/Chief Officer of the respective four

aforesaid vessels. The plaintiffs have thereafter issued invoices to the 2nd defendant of UAE DHS 60,242. However, the plaintiffs never received any payment in that behalf. On various occasions the plaintiffs contacted the 2nd defendant and sought payment of the aforesaid amount. Ultimately, the 2nd defendant issued cheques of UAE DHS 31,999 drawn on Alahli Bank of Kuwait as part payment. However, cheques when deposited were dishonoured. The plaintiffs have thus claimed decree for the sum of UAE DHS 60,242/- as per the particulars of claim being Exhibit A to the plaint. In paragraph 5 of the said plaint, it has been contended that the plaintiffs are entitled to recover the said amount for the repairs carried out in respect of other five vessels from the sale proceeds of the 1st defendant as the 1st defendant is the sister vessel of the said five vessels in which repair work has been carried out and for which the amount was outstanding and payable. It has been contended that under section 4 of the Court of Admiralty Act, 1861 the plaintiffs are entitled to maintain the present suit and this Court has jurisdiction to try the suit.

4. The defendant nos. 1 and 2 have not entered their appearance in the proceedings. The only person who has contested the suit is the 3rd defendant who is the plaintiff in the connected suit being Admiralty Suit No. 30 of 2002. The 3rd

defendant has denied the aforesaid facts and put the plaintiffs to the strict proof thereof on the ground that they are unaware of the said facts. However, the 3rd defendant has strenuously contended that the 1st defendant vessel belongs to the Gulf Oil company and do not belong to the 2nd defendant herein and thus the 1st defendant vessel is not a sister vessel to the other four vessels in which the repair work has been carried out by the plaintiff and, therefore, the plaintiffs are not entitled to maintain the present suit. On the aforesaid pleadings and the written statement the following issues were framed :-

1. Whether the suit is liable to be dismissed for ant of cause of action as alleged by the third Defendants?

2. Whether the third Defendants prove that the first Defendant Vessel is owned by Gulf Oil Co. WLL, UAE. ?

3. Whether the Plaintiffs prove that the vessel m.t. Arabian Queen, m.t. Shamsa, m.t. Arabian Victory and m.t. Arabian Beauty are owned by Arabian Tankers Co. LLC?

4. Whether the plaintiffs prove that m.t. Arabian Queen and m.t. Shamsa are sister vessels?

5. Whether the plaintiffs prove that the second Defendants had sought quotations for repairs to m.t. Arabian Queen, m.t. Shamsa, m.t. Arabian Victory and m.t. Arabian Beauty ?

6. Whether the plaintiffs prove that the second Defendants through their e-mails or faxes accepted and/or confirmed the quotations ?

7. Whether the Plaintiffs prove that Defendants have carried out repairs to the vessels to the satisfaction of the second Defendants ?

8. Whether the Plaintiffs prove that their claim is in the nature of necessaries?

9. Whether the Plaintiffs prove that their claim is within the period of limitation.

10. Whether the Plaintiffs prove that cheque of UAE Dirhams 31,999 drawn on Alahli Bank of Kuwait, was issued by the second

Defendants towards part payment ?

11. Whether the Plaintiffs are entitled to UAE Dirahms 60,242 along with interest @ 12% per annum and/or entitled to a decree for the said sum against the first Defendant vessel?

12. What orders ? What reliefs ?

5. The matter was thereafter sent for recording evidence and before the Commissioner the plaintiffs have produced two witnesses, namely, one Mr.Devrish Malik and Capt. Satnam Singh Sahi. Both the witnesses have given their evidence in details. The learned counsel for the plaintiffs has also produced various documentary evidence including the Lloyd's Maritime Directory in respect of the two vessels Arabian Lady and Arabian Victory wherein the 1st defendant has been shown as the vessel belonging to the 2nd defendant along with other vessels. It has been thus contended that the 1st defendant vessel is a sister vessel of the aforesaid other four vessels. The relevant portion of the said directory is as under :

"ARABIAN TANKERS CO. L.L.C.

PO Box 5, Ajman, United Arab Emirates Tel: + 971 6 422294 Fax:971 6 427389 Personnel: Gen.Man: Capt. J.S. Brar.

Dubai, United Arab Emirates Tel: + 971 4 823849 Fax: =971 4 823953

Arabian Beauty (UTICA TRADING INC., Tortola) m tank Gt 692 Net 482 Dwt 1329 Blt 1981 Flg BLZ V3Z19 L 64, 9 B 10, D 4.5 Dft 4.3

Arabian Glory (UTICA TRADING INC., Tortola) m tank Gt 986 Net 665 Dwt 2313 Blt 1983 Sp 11.5 Flg BLZ V3AY8 L 81.6 B 12. D 5.5 Dft 5.1

Arabian Lady
m tank Gt 1702 Net 1120 Dwt 3270 Blt 1983 Sp 12 Flg BLZ V3UH L 87.5 B 13.5 D 6.9 Dft. 6 LIQ 3,749.

Arabian Victory (UTICA TRADING INC., Tortola) m tank Gt 1270 Net 614 Dwt 2356 Blt 1984 Flg BLZ V3ZH9 L 79.5 B 12. D 5.5 Dft 5.1"

Apart from the aforesaid, it is the case of the plaintiffs that the document of mortgage which has been relied upon by the 3rd defendant in a connected suit namely, Admiralty Suit No. 30 of 2002 also indicates that the said defendant no. 1 vessel

belongs to 2nd defendant and one Mr. Al Suwaidi is beneficial owner of both the 2nd defendant as well as Gulf Oil Company. Thus, it makes it clear that the said ships are sister ships. It has been pointed out that the Gulf Oil Company and the Arabian Tankers Co. LLC being the 2nd defendant herein are both the associate companies and one Mr. Alsuwaidi is the owner and majority share holder of the company known as Gulf Oil and also the Manager and Operator of the vessels set out therein. The said Arabian Tankers Co. LLC which is the 2nd defendant herein is treated as associate company of the said Arabian Tankers Co. LLC It is contended that on the basis of the same it is clear that the vessels are sister concerns as the ownership is common of both the aforesaid companies.

6. On the other hand, the defendant no. 3 has contended that the plaintiffs have failed to establish that they are the sister vessels. According to the defendant no. 3, both the companies are independent legal entities and, therefore, it cannot be said that both the companies are associated with each other and /or having a common ownership and, therefore, the ship being defendant no. 1 herein and other ships are the sister vessels as contended by the plaintiffs. It is further submitted that the plaintiffs have failed

to establish that there is a common ownership in respect of both the vessels i.e. defendant no. 1 herein and the four vessels to which the plaintiffs have given supplies of necessaries and/or carried out repair work and thus the plaintiffs suit is liable to be dismissed.

7. I have considered the aforesaid arguments of both the parties. I have also perused the evidence which has been produced before me. The evidence with the cross-examination of the witness of the plaintiff namely, Mr. Devrish Malik is eloquent on this aspect. In the course of the said cross-examination, it has been mentioned as under :-

33.Question Do you have any evidence proving that Mr. Al Suwaidi is the owner of Arabian Tankers Company?

Answer I have complete personal knowledge with the number of years that I have worked with M/s. Five Ocean Ship Repairing & Marine Services LLC and done work for Arabian Tankers that the owner is Mr. Faizal Al Suwaidi.

34.Question Question is what evidence do you have that the owner of Arabian Tankers

Company is Mr. Al Suwaidi?

Answer For all the previous invoices that were billed to Arabian Tankers and for the returned cheques from Arabian Tankers carries the signature of Mr. Faizal Al Suwaidi.

35.Question Is it only on this basis that you are saying that Mr. Al Suwaidi is the owner of Arabian Tankers Company. And is this also the basis of your personal knowledge?

Answer No. This is just the evidence that I have and the knowledge that I have that he is the owner of Arabian Tankers. By the presence of his name in the Trade License of Arabian Tankers and also all the meetings that I have had with him concerning matters related to Arabian Tankers.

41. Question Does the Trade License say that Mr. Faizal Al Suwaidi is the owner of the Arabian Tankers Company?

Answer Yes.

43. Question Where did you see this Trade License?

Answer In the receiption area of Arabian Tankers Company. As a requirement by law the Company is required to display the copy of the Trade License in a conspicuous place of the office.

48.Question Do you have any evidence to prove that Mr. Faizal Al Suwaidi is the owner of the Gulf Oil Company? Answer I do not have any written document but with my knowledge I am fully aware that he is the owner of Gulf Oil Company. I also have met him in his office in Gulf Oil Company a couple of times.

58.Question Do you know who the shareholder is or who are the shareholders in the 1st Defendant vessel?

Answer The shareholders are Gulf Oil Company and Gulf Oil Company is owned by Mr. Faizal Al Suwaidi.

65.Question Who is the same owner of the five vessels mentioned hereinabove?

Answer Mr. Faizal Al Suwaidi is the owner of all the abovementioned vessels.

66.Question On what basis are you making this statement?

Answer The vessel m.t. 'Arabian Lady' is owned by Gulf Oil Company and the other four vessels mentioned hereinabove are owned by Arabian Tankers Company and both these Companies are owned by Mr. Faizal Al Suwaidi.

67.Question In the plaint, you have stated that these four vessels are owned by Arabian Tankers Company. Why is it not mentioned in the plaint that these four vessels are owned by Mr. Faizal Al Suwaidi?

Answer These four vessels are owned by Arabian Tankers Company and Arabian Tankers Company is owned by Mr. Faizal Al Suwaidi who is also the owner of Gulf Oil Company. Hence as a result they are owned by the same person.

The aforesaid evidence which has been led by the plaintiffs coupled with the documentary evidence produced in the form of the said mortgage deed which the defendant no. 3 themselves have relied upon in connected suit as well as the said Maritime Directory, I am of the opinion that the plaintiffs have been able to establish that the defendant no. 1 is the sister ship of the other aforesaid four ships and thus the plaintiffs are entitled to maintain the present suit. On the other hand, the defendant no. 3 has led no evidence. The defendant no. 3 has rested his case only on cross-examination and in the cross-examination merely the questions are asked as to on what basis the claim has been made which according to me the witness has in depth answered. Furthermore, once the defendant no. 3 have themselves relied upon the said deed of covenants in which both the Gulf Oil which is admittedly the owner of the ship being the 1st defendant and the defendant no. 2 herein which is admittedly the owner of other four vessels are treated as associate companies and it is mentioned that Mr. Al Suwaidi is behind all these companies and holds substantial share holding therein, in my view, the plaintiffs have been able to establish that the defendant no. 1 is the sister vessel of the other four vessels in respect of which the plaintiffs have done the repair work and the amount is admittedly outstanding.

8. In so far as the merits of the case is concerned, the defendant no. 3 has fairly conceded that they are not in a position to dispute various averments on the facts of the case and thus it is not possible for them to contest the said claim. However, even otherwise, on the evidence as it exists before me, the plaintiffs have been able to establish their claim for the repairs carried out by them in respect of the four vessels. The payments are made to the plaintiffs by the defendant no. 2 for repairs carried by cheques but the same are dishonoured. The defendant no. 1 and 2 have not contested the suit claim. Thus I am required to hold that the plaintiffs are entitled to the said claim. The defendant no. 1 vessel being the sister vessel the plaintiffs will be entitled to sale proceeds since it is admittedly sold and the amount has been deposited in this Court in connected Suit No. 30 of 2002. In view of my decision in the said connected Suit No. 30 of 2002 holding the said suit is not maintainable and consequently I have dismissed the same. The claim of the defendant no. 3 in that suit has failed. Thus, the plaintiffs herein and other creditors who are not holding the decrees in their favour against the defendant no. 1 will be entitled to the sale proceeds which is lying with the office of the Prothonotary & Senior Maser, High Court, Bombay. In the aforesaid circumstances,

I pass the following order :-

> There shall be a decree in favour of the plaintiffs and against defendant nos. 1 and 2 for UAE DHS 60,242/- with further interest thereon at the rate of 12% per annum. I further direct that the Prothonotary and Senior Master, High Court, Bombay, shall pay over to the defendant the suit claim along with other creditors who are holding the decrees as against the defendant no. 1 from the sale proceeds thereof which is lying deposited with the Office of the Prothonotary & Senior Master, High Court, Bombay, as per rules.

8. Suit disposed of accordingly. However, there shall be no order as to costs.

9. Application for stay of this order is rejected.